

December 6, 2001

Sent via e-mail, hand-delivery and/or U.S. mail

Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

re: DTE 01-31, Verizon's Alternative Regulation Plan

Dear Secretary Cottrell,

The Attorney General requests the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") to compel Verizon New England d/b/a Verizon Massachusetts ("Verizon") to file copies of the CLEC Report 2001 pages identified in Verizon's supplemental reply to AG-VZ 4-11 (See Attachment A), or in the alternative, to strike all portions of Verizon's testimony that rely upon this information.¹ Verizon used this information to draw conclusions in its Direct Testimony regarding the state of local competition in Massachusetts.² The Department has already ruled that Verizon must produce information upon which its testimony lies,³ but Verizon, despite repeated

¹ See Attachment A. According to Verizon, the CLEC Report 2001 (14th Ed.), was published by the New Paradigm Resource Group, Inc. in the Spring 2001. Please note that the Attorney General does not seek production of the entire document, which contains over 1,000 pages; rather, the documents subject to this motion to compel are only those 30 pages described in AG-VZ-4-11 (supplemental reply).

² Direct Testimony of William E. Taylor, D.T.E. 01-31 Phase I, April 12, 2001, at page 7, line 19, or page 10, lines 1-3, depending on Word or WordPerfect version printed.

³ "[T]he Attorney General [is] correct in that the Department's investigation and eventual decision in this proceeding would be lacking an essential element if opposing parties were not permitted to evaluate fully and contest Verizon's assertions." Hearing Officer Ruling, D.T.E. 01-31 Phase I,

requests, has not produced the information.

In compliance with the Hearing Officer's previous rulings,⁴ the Attorney General twice asked Verizon to file the documents identified in the Company's reply to information requests. Both times, however, Verizon declined, citing potential violation of copyright laws.⁵ The Attorney General now seeks the Department's assistance in obtaining this information.⁶

The Attorney General, like any party to an adjudicatory hearing, has the due process right to review and cross examine evidence and testimony offered by another party during the course of the hearing. G.L. c. 30A, § 11(3). Furthermore, the Department cannot consider or rely on evidence not filed with the Department and not made part of the official record. G.L. c. 30A, § 11(4). The Department has exercised its authority to require the offering party to file the relevant portion of evidence not previously disclosed, despite an objection regarding potential copyright violations.⁷ If the

September 14, 2001, at page 8.

⁴ See Hearing Officer Memorandum, D.T.E. 01-31 Phase I (August 28, 2001) at 1; Hearing Officer Ruling, D.T.E. 01-31 Phase I (September 14, 2001) at 8 ("Therefore, future motions in this proceeding relating to discovery disputes will not be favorably received if they lack a showing that the moving party made a good faith effort to resolve the dispute before filing its motion.").

⁵ See Attachment A.

⁶ While motions to compel generally are to be made within seven days of the due date for production (220 C.M.R. § 1.06(6)(c)(4)), good cause exists for allowing this motion: (1) the repeated number of requests for compliance; (2) the pending commencement of hearings; and (3) the recent establishment or affirmation of Departmental precedent for allowing such motions even up to the date of hearing. See Hearing Officer Ruling, Verizon's PARTS Tariff, DTE 98-57 Phase III, November 15, 2001, Tr. vol. 4 at 822-826 (Covad offered testimony based on a transcript from another public service commission's hearing during a DTE adjudicatory hearing; Attorney General asked the Hearing Officer to issue a record request to require Covad to produce the relevant excerpt of transcript; Verizon asked DTE to order Covad to produce the entire transcript or strike all testimony that depends on the transcript; Covad warned DTE that the transcript may be copyrighted and difficult to produce; Hearing Officer granted the Attorney General's record request for the relevant portions of the transcript as it pertained to the witness's testimony at hearing; Covad subsequently withdrew the testimony which was based on the transcript).

⁷ Hearing Officer Ruling, Verizon's PARTS Tariff, DTE 98-57 Phase III, November 15, 2001, Tr. vol. 4 at 822-826.

D.T.E. 01-31 Phase I

party cannot or will not produce the evidence, the party should withdraw the testimony. If the party does not withdraw the testimony, Department precedent requires that the testimony be stricken and not considered in the final decision. G.L. c. 30A, § 11(4).

Verizon has allowed the Attorney General to view the requested documents, and, based upon that review, the Attorney General has determined that the documents must be used for cross examination. Aside from the clear procedural record defect, cross examination will be difficult for the Department to follow unless Verizon files the documents with the Department so that the Hearing Officer, Department staff, and the parties can follow the examination. Verizon has asked the Department in other dockets to strike testimony unless the information supporting the testimony is produced.⁸ Here, Verizon should be held to the same standard.

For these reasons, the Attorney General urges the Department to compel Verizon to file the 30 requested pages of the CLEC Report 2001, 13th and 14th Editions, described in AG-VZ-4-11 or, in the alternative, to strike all Verizon testimony that relies upon those unproduced pages.

Sincerely,

Karlen J. Reed
Assistant Attorney General
Utilities Division

KJR/kr

cc: Paula Foley, Hearing Officer (w/enc.)
DTE 01-31 service list (w/enc.)

⁸ *Id.* See also *Verizon's Unbundled Network Elements*, DTE 01-20 (Part A - UNE), Verizon Motion to Compel Discovery (with motion to strike at 3, fn. 3), July 5, 2001.

ATTACHMENT A
DTE 01-31, Verizon's Alternative Regulation Plan

**Attorney General's Information Requests and Verizon's responses to AG-VZ-4-11
(supplemental reply), AG-VZ-2-2(e), and AG-VZ-1-8(a) (errata reply)**

AG-VZ-4-11 Please refer to Verizon's response in AG-VZ-1-8(a) and AG-VZ-2-2(e).

- a. Please give the edition number, page number, and paragraph reference in the CLEC 2001 Study for each RCN reference described in Verizon MA's response to AG-VZ-1-8(a). Please note that this is our second request for this information.
- b. Please provide copies of the pages referenced above.

Verizon's Supplemental Reply (October 16, 2001):

- a. **The CLEC Report 2001 is produced by New Paradigm Resources Group, Inc. The semi-annual report was issued in the fall of 2000 (13th Edition) and the spring of 2001 (14th Edition). The responses to AG-VZ 1-8a and AG-VZ 2-2e were based upon the latest available information, which was the 13th Edition. In response to this request, the Company is providing cites for the 13th Edition, and the more current 14th Edition.**

The requested data can be found in the 12 page "Company Snapshot" devoted to RCN in Chapter 9 of the 13th Edition. The data can also be found in the 15 page "Company Snapshot" in Chapter 13 and on page 1 of 5 in Chapter 2 of the 14th Edition.

Specific references include the following.

"Single source provider of residential services" can be found on page 3 of 12 of the 'Company Snapshot' in the 13th Edition, or on page 1 of 5 of Chapter 2 in the 14th edition.

- **"Has more than 32,000 miles of fiber cable in place" can be found in the Company Snapshot on page 1 of 12 of the 13th Edition. In the 14th Edition, there were 450,000 miles of fiber in-place as shown on page 1 of 15 of the Company Snapshot.**
- **"Has a Lucent 5ESS switch in Boston" is shown in the Company**

Snapshot on page 7 of 12 of the 13th Edition and page 10 of 15 in the 14th Edition.

- **“Has entered a joint venture with Boston Edison” is in the Company Snapshot on page 3 of 12 in the 13th Edition and on page 3 of 15 in the 14th Edition.**
- **“Serves the residence market in Allston, Belmont, Boston, Brookline, Brighton, Burlington, Dedham, Framingham, Hyde Park, Lexington, Needham, Newton, Norwood, Quincy, Randolph, Somerville, Wakefield, Waltham, Watertown, and Woburn” is shown in the Company Snapshot on pages 7 and 8 of 12 of the 13th Edition and on pages 10 and 11 of 15 in the 14th Edition.**

- b. As stated in the response to AG-VZ-2-2(e), the information requested is protected by copyright laws. It cannot be duplicated but will be made available for inspection at Verizon MA's offices at a mutually convenient time.**

AG-VZ-2-2 Please refer to Verizon MA's response to AG-VZ-1-8.

- e. Please produce a copy of the CLEC 2001 Study, published by New Paradigm Resources Group, Inc., and give the page or paragraph references for each RCN reference described in Verizon MA's response to AG-VZ-1-8(a).

Verizon's Reply (August 6, 2001):

- e. **The information requested is voluminous, and is protected by copyright laws. It cannot be duplicated but will be made available for inspection at Verizon MA's offices at a mutually convenient time.**

AG-VZ-1-8 Please refer to the direct testimony of William E. Taylor, page 7, line 19, [page 10, lines 1-3] where he states: "RCN is another effective competitor in Massachusetts. A comparison of RCN Platinum service with an equivalent package constructed by Verizon shows that RCN has a price advantage of more than \$75 per month over Verizon."

- a. Identify the specific communities in which RCN is currently offering basic residential or business telephone service in Massachusetts. For each such community, indicate the

number of residential and business customers (separately) currently being served by RCN.

Verizon's Errata Reply (July 25, 2001) (public version):

- a.) **The best source of information on the specific communities served by RCN would be either to request such data from RCN or to review RCN's tariffs. Attached is a portion of RCN's tariffs which indicate that RCN offers its services throughout the 128 LATA in Massachusetts.**

Verizon MA has two sources of data on the markets served by RCN that clearly demonstrate that RCN is an effective competitor in Massachusetts. The first data source is the number of wholesale services that RCN purchases from Verizon MA grouped by area code. See the attached chart. These data are the confidential and proprietary information of RCN that may not be disclosed by Verizon MA without its authorization. The information is, accordingly, being provided only to the Department.

The second data source is the "CLEC 2001 Study" published by New Paradigm Resources Group, Inc. This report indicates that RCN:

- Seeks to become a single source provider of residential services,**
- Has more than 32,000 miles of fiber cable in place,**
- Has a Lucent 5ESS switch in Boston,**
- Has entered a joint venture with Boston Edison, and**
- Serves the residence market in Allston, Belmont, Boston, Brookline, Brighton, Burlington, Dedham, Framingham, Hyde Park, Lexington, Needham, Newton, Norwood, Quincy, Randolph, Somerville, Wakefield, Waltham, Watertown, and Woburn.**

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications and Energy on))	
its own Motion into the Appropriate Regulatory Plan to succeed Price Cap))	
Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts'))	D.T.E. 01-31
intrastate retail telecommunications services in the Commonwealth))	
of Massachusetts))	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by either hand delivery, mail, and/or e-mail.

Dated at Boston this 6th day of December 2001.

Karlen J. Reed
Assistant Attorney General
Utilities Division
200 Portland Street, 4th Floor
Boston, MA 02114
(617) 727-2200